

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

HECTOR MAY,

Defendant.

Case No. 7:18-cr-00880-VB

**DEFENDANT HECTOR MAY'S AMENDED SENTENCING MEMORANDUM**

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Dated: July 25, 2019

**STATEMENT OF FACTS**

Defendant Hector May (“Defendant” or “Mr. May”) pled guilty and allocated to his criminal conduct on December 13, 2018 to one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 and one count of investment advisor fraud in violation of 15 U.S.C. § 80b-6 and 80b-17. Sentencing is scheduled for July 12, 2019.

In preparation for sentencing, United States Probation (“Probation”) drafted a Presentence Investigation Report (“PSR”), dated February 7, 2019. Mr. May’s base offense level was calculated at 7. The PSR recommended a twenty-level increase because of the amount of loss; a four-level increase because of the number of victims; a two-level increase because the offense involved sophisticated means; and a two-level increase for Defendant’s abuse of his position of public trust, raising his sentencing guidelines’ (“Guidelines”) level from a 7 to a 39. PSR, ¶¶5. A three-level reduction was deemed applicable because of Mr. May’s acceptance of responsibility and therefore, his total offense level was calculated at 36.

Ultimately, based on the Guidelines and considering 18 USC 3553(a) factors of age, nonviolent offense and lack of criminal history, Probation recommended the following sentence: a term of incarceration of 120 months (reflecting a downward variance of 68 months from Guideline Range 188-235), three years supervised release, restitution in the amount of \$8,041,233.17 and forfeiture in the amount of \$11,452,185. PSR, p. 25.

**STANDARDS OF LAW**

**I. Statutory Factors Set Forth In 18 U.S.C. § 3553(a)**

The federal sentencing system is ultimately governed by 18 U.S.C. § 3553(a) (“Section 3553(a)”). United States v. Booker, 543 U.S. 220, 233-34 (2005). According to Section 3553(a), “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the” following:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

18 U.S.C. § 3553(a)(2). As applicable here, in determining the appropriate sentence, the court is directed to consider the following:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for--
  - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines
- (5) any pertinent policy statement--
  - (A) issued by the Sentencing Commission...subject to any amendments . . . [;]
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

## **II. Sentencing Guidelines**

In determining the appropriate sentence, courts are also directed to consider the sentencing guidelines (“Guidelines”) promulgated by the United States Sentencing Commission. 28 U.S.C. § 994. Although the Guidelines are merely advisory, Booker, 543 U.S. at 259-60, courts are instructed to “begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted).

Given Mr. May’s criminal conduct and that he has no other criminal history, the Guidelines’ “base level offense” is a 7. 18 U.S.C. Appx. § 2B1.1(a)(1); see also PSR, ¶5. Total enhancements and reductions as applied by Probation result in 32-level increase and 3-level decrease for a total offense level of 36.

### **THE FACTORS ENUMERATED IN SECTION 3553(a) SUPPORT PROBATION’S RECOMMENDATION OF A DOWNWARD VARIANCE**

#### **I. Section 3553(a)(2)(1): Nature and Circumstances of the Offense**

As Mr. May’s plea and allocution reflect, there is no excuse for his actions. He has not asked for his family’s support at sentencing, has not requested letters of support from friends or community members and he has not attempted to paint a picture of his life and good deeds as anything other than a smokescreen. Notwithstanding same, two individuals from his past, an Iraq war veteran, and the President and CEO and the Rockland County Business Association, have come forward and provided voluntary letters of support for Mr. May [Exhibit 3]. However, in his own words, he “lived a lie” and although his intentions from the beginning were not to scheme or defraud, his poor judgment, lack of expertise in financial planning and general insecurities facilitated and maintained acts of fraud and deceit against people he considered friends and family for many, many years.

Mr. May is not asking for the Court's sympathies, nor does he believe he deserves it. However, as Probation cites in the PSR, Mr. May's non-violent conduct (as it relates to the offense) and his first-time offender status are nonetheless factors in support of a sentence below the advisory guideline range. PSR, ¶100.

## **II. Section 3553(a)(1): History and Characteristics of the Defendant**

The PSR adequately describes Mr. May's social, education and employment history and does not need to be duplicated here. Born the son of immigrant parents, Mr. May was raised to develop a strong work ethic and concern for the community. Somewhat stigmatized by his lack of formal education – he struggled with and was never able to finish college – Mr. May prided himself on started his own business, Executive Compensation Planners, on December 27, 1982.

Mr. May never set out to defraud his clients; it was never a long-contemplated plan to scheme and steal from hard working people who were awesome, his friends. Mr. May wanted to be a successful businessman not only for himself, but for his clients. However, when he started to struggle, and his business was not as prosperous as he hoped, he thought he could take money to cover expenses – both personal and business related – and eventually put the money back. However, that never happened, and his losses only compounded and the money he took only increased. It can be argued that Mr. May crimes were an attempt to remain legitimate and keep his status as a contributing member of the community.

Surely, if ever a person is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the time of sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, is necessary for the Court to consider "the history and characteristics of the defendant." *U.S. v. Adelson* 441 F.Supp.2d 506 (SDNY 2006).

Over the course of several decades, Mr. May advised county executives, fought for the poor, advanced the causes of Latinos and sat on the boards of business associations and nonprofits across Rockland. He and his firm contributed to political campaigns on both sides of the aisle. He was appointed the Executive Board of People to People, Rockland County's largest food pantry working to help struggling Rocklanders through difficult times with dignity through its programs. He was treasurer of Housing Opportunities for Growth, Advancement and Revitalization, known as HOGAR, in the 1990s. A member of Hispanic Coalition of Rockland County, he raised concerns in 2002 that a county redistricting of Haverstraw village could curb Hispanics' clout. In 2005, the Rockland Development Council named May outstanding volunteer of the year, noting his contributions to charities including St. Dominic's Home, People to People and the Monsey Medical Center. Mr. May was also appointed to a panel in 2012 to help decide the fate of the financially ailing Summit Park Hospital and Nursing Care Center. Community members most familiar with Mr. May described him as "part of the fabric of Rockland." He was the recipient of the Rockland Business Association's Pinnacle Award several years ago.

**A. Hector May's Age and Medical Condition**

Mr. May is 78 years old. Sentenced to any significant period of incarceration, it is very likely he will die in prison. According to Dr. Richard King, Mr. May's treating physician, Mr. May has "several conditions which must be monitored on an ongoing basis". [Exhibit 1] These conditions include Diverticulitis, Type 2 Diabetes, Obesity, Hypertension and Asthma. In his professional opinion, Dr. King believes these conditions could become serious issues if monitoring (and necessary treatment) is not on a continual basis. [Id.]

In addition, according to pulmonologist, Dr. Joseph Ghassibi, Mr. May has a longstanding history of severe sleep apnea and has been on a Continuous Positive Airway Pressure (CPAP)

machine for the past 15 years. [Exhibit 2] Although CPAP machines are allowed in the BOP, it takes time to process the prescription and Mr. May will presumably be without one until facility physicians approve and secure its use.

According to a 2016 report by the Office of the Inspector General on the impact of an aging inmate population on the Federal Bureau of Prisons it was found that

*...aging inmates are more costly to incarcerate than their younger counterparts due to increased medical needs. We further found that limited institution staff and inadequate staff training affect the BOP's ability to address the needs of aging inmates. The physical infrastructure of BOP institutions also limits the availability of appropriate housing for aging inmates. Further, the BOP does not provide programming opportunities designed specifically to meet the needs of aging inmates. We also determined that aging inmates engage in fewer misconduct incidents while incarcerated and have a lower rate of re-arrest once released; however, BOP policies limit the number of aging inmates who can be considered for early release and, as a result, few are actually released early.<sup>1</sup>*

Based on the abovementioned, it is reasonable to conclude that Mr. May's incarceration no matter the length will not be without the risk of complication or hardship.

#### **B. Collateral Consequences of Offense**

Mr. May had been a central figure in his family and a member of the Rockland Community. After his arrest combined with the scrutiny of the media, Mr. May severed nearly all his social ties and his relationship with his family, in particular his wife and children, was severely damaged. Understanding Mr. May's responsibility in this aftermath does not depreciate the seriousness of the collateral consequences of the offense. His wife, has reportedly been suffering from severe depression following Mr. May's arrest. Her future is certain and her ability to financially support herself in her senior years is severely impacted. Mr. May's daughter, who worked with him for a number of years, is also ensnarled in civil litigation. Mr. May's personal and

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<sup>1</sup> <https://oig.justice.gov/reports/2015/e1505.pdf>

professional reputation is destroyed, and this will haunt him as he possibly spends the remainder of his life in prison.

In the present instance, the destruction of the defendant's business has already achieved to a significant extent some although not all of the objectives otherwise required to be sought through the sentencing process. Elimination of the defendant's ability to engage in similar or related activities – or indeed any major business activity – for some time, and the substantial loss of assets and income resulting from this have decreased for the foreseeable future his ability to commit further crime of the type he was tempted to undertake, and constitutes a source of both individual and general deterrence. Others engaged in similar activities or considering engaging in them have doubtless already learned through informal sources that loss of the business entity involved is an obvious consequence of such illegal behavior.<sup>2</sup>

### **C. Hector May's Restitution Efforts**

Mr. May understands that he will never be able to repay all the money he has stolen. However, Mr. May has divested himself of his assets since the time of his arrest and is in the process of liquidating same for distribution to his victims totaling approximately \$888,000. He and his wife have forfeited all personal property of value and they are in the process of listing their real estate for sale. Since his arrest, Mr. May and his wife have been surviving on social security and pension payments. Notwithstanding same, Mr. May understands it is his responsibility to continue making efforts towards to restitution and will continue to do so at every possible opportunity. In addition to the agreed upon restitution amounts and efforts, Mr. May is offering to forward his entire monthly social security earnings of approximately \$3,000.00, and half of his \$3,000.00 monthly pension from Equitable Life, to continue making attempts at restitution. Although it

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<sup>2</sup> See *United States v. Gaing*, 829 F. Supp. 669, 670-71 (S.D.N.Y. 1993), *aff'd*, 31 F.3d 73 (2d Cir. 1994).



undoubtedly falls short of the total, Mr. May hopes these extra efforts will alleviate some of the unimaginable pain he has caused his victims [Exhibit 4].

### **III. Section 3553(a)(2): Need for the Sentence Imposed**

#### **A. Section 3553(a)(2)(B): Afford Adequate Deterrence to Criminal Conduct**

The public is well informed of the effects of this case and received a strong message through publicity generated by coverage of this case. The collateral consequences of Mr. May's conviction are also well documented. See supra Part B. Accordingly, any potential defendants need only observe the loss of Defendant's position and income as reasons to avoid criminal activity. As previous Courts have found, when a defendant's reputation is ruined by his conviction, it makes it extremely unlikely that they will ever been in a position to reoffend. *U.S. v. Adelson*, 441 F.Supp.2d 506 (SDNY 2006).

#### **B. Section 3553(a)(2)(C): Protect the Public from the Defendant's Further Crimes and the Improbability of any Future Criminal Conduct**

The likelihood that defendant "will engage in future criminal conduct [is] a central factor that district courts must assess when imposing sentence." *Pepper v. U.S.* 131 S.Ct. 1229, 1242 (2011); *U.S. v. D.M.* (E.D.N.Y. May 1, 2013). There is no need to protect the public from Mr. May. Moreover, any harm that could be imposed on the public is further lessened given that Mr. May's likelihood to reoffend is extremely low if not non-existent. Defendant very unlikely to reoffend and poses no danger to the public.

#### **C. Section 3553(a)(2)(D): Provide the Defendant with Needed Medical Care**

The Sentencing Commission now recognizes that "[p]hysical condition . . . may be relevant in determining whether a departure is warranted," and has always recognized that "in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than,

imprisonment.” USSG § 5H1.4. As detailed in Supra II. B., Mr. May’s has a serious of health conditions that require constant care especially as he gets older. If it is determined that the BOP may not be best suited to care for him, it should be a factor when considering an appropriate sentence.

**D. Section 3553(a)(4): Kinds of Sentence and the Sentencing Range Established**

One of the goals of sentencing is rehabilitation, *see, e.g., United States v. Grayson*, 438 U.S. 41, 45-48, 98 S.Ct. 2610, 2613-14, 57 L.Ed.2d 582 (1978); *Williams v. New York*, 337 U.S. 241, 247-48, 69 S.Ct. 1079, 1083-84, 93 L.Ed. 1337 (1949), and a defendant's admission of responsibility or expression of contrition “is often a significant first step towards his rehabilitation and, for that reason, deserving of a possible reward in the form of a lessened sentence,” *Smith v. Wainwright*, 664 F.2d 1194, 1196 (11th Cir.1981). Admission of guilt thus may properly be taken into account in determining what sentence is needed to achieve rehabilitation. *See Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970).

**E. Section 3553(a)(7): Need to Provide Restitution to any Victims of the Offense**

Mr. May has limited capacity for making full restitution, but can continue making steps towards restitution for the rest of his life. So far as monetary sanctions are concerned, therefore, the Court could indeed impose a life sentence. Despite his limitations, it should be noted that Mr. May, from the onset of his arrest, has fully cooperated with law enforcement authorities from the United States Government and SEC officials. Additionally, Mr. May has divested himself of his assets from the time of arrest, and is in the process of liquidating same for distribution to his victims totaling approximately \$888,000.00 dollars [**Exhibit 4**].

### CONCLUSION

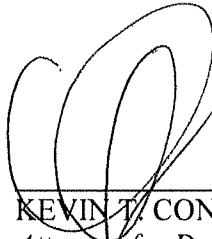
Mr. May stands before the Court a 78-year-old man who is facing a de-facto life sentence. If the sentence does amount to de facto life it should just be one more consideration that the Court might be asked to weigh in determining the sentence, properly so if the prospect of dying in prison is thought to make a sentence of otherwise appropriate length harsher.

What should drive the Court's decision in this case, more than any other single factor, is the inordinate emphasis that the Sentencing Guidelines place in fraud cases on the amount of actual or intended financial loss. As many have noted, the Sentencing Guidelines, because of their arithmetic approach and also in an effort to appear "objective," tend to place great weight on putatively measurable quantities, such as the weight of drugs in narcotics cases or the amount of financial loss in fraud cases, without, however, explaining why it is appropriate to accord such huge weight to such factors. *See generally* Kate Stith & José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 69 (1998). Like most fraud cases, Mr. May's case represents the kind of "piling-on" of points for which the guidelines have frequently been criticized.

This is one of those cases in which calculations under the Sentencing Guidelines lead to a result so patently unreasonable as to require the Court to place greater emphasis on other sentencing factors to derive a sentence that comports with federal law. Notwithstanding all the mitigating factors outlined above, meaningful prison time might be necessary to achieve retribution and general deterrence. But as to the latter, there is a considerable evidence that even relatively short sentences can have a strong deterrent effect on prospective "white collar" offenders. *See, e.g.,* Richard Frase, *Punishment Purposes*, 58 Stanford L.Rev. 67, 80 (2005); Elizabeth Szockyj, *Imprisoning White Collar Criminals?*, 23 S. Ill. U.L.J. 485, 492 (1998). *Cf.* United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing* 56 (2004) (noting that the Sentencing Guidelines were written, in part, to "ensure a *short but definite* period of confinement

for a larger proportion of these 'white collar' cases, both to ensure proportionate punishment and to achieve deterrence") (emphasis supplied). Even when a court finds a defendant's guidelines encompass incarceration, many courts recognize that the collateral consequences of a trial and conviction, especially in a highly publicized case, can serve as a significant deterrent. See e.g., *United States v. Stewart*, 590 F.3d 93, 141 (2d Cir. 2009).

Dated: July 25, 2019  
Spring Valley, New York

A handwritten signature in black ink, appearing to read 'Kevin T. Conway', is written over a horizontal line.

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